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9 Attorneys for Respondent

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 **DERRAN SMILEY,**

Petitioner,

15 **v.**

16 **MIKE EVANS, Warden,**

Respondent.

C 08-0045 RMW (PR)

19 **RESPONDENT'S EX PARTE APPLICATION FOR FIRST EXTENSION OF TIME**
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14
15 v.

16 **MIKE EVANS, Warden,**

17 Respondent.
18

C 08-0045 RMW (PR)

**RESPONDENT'S EX PARTE
APPLICATION FOR FIRST
EXTENSION OF TIME**

19 Respondent respectfully requests that this Court grant a sixty (60) day extension of time,
20 to and including August 26, 2008, to file the answer in this case. Respondent has made no prior
21 request for an extension of time.

22 As set forth in the accompanying Declaration of Counsel, counsel for respondent needs
23 sixty (60) days to complete and file the answer. Respondent does not believe petitioner will be
24 prejudiced by this request.
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1 Wherefore, respondent respectfully requests that this Court grant this application for an
2 extension of time.

3 Dated: June 26, 2008

4 Respectfully submitted,

5 EDMUND G. BROWN JR.
6 Attorney General of the State of California

7 DANE R. GILLETTE
8 Chief Assistant Attorney General

9 GERALD A. ENGLER
10 Senior Assistant Attorney General

11 PEGGY S. RUFFRA
12 Supervising Deputy Attorney General

13 /s/ Joan Killeen
14 JOAN KILLEEN
15 Deputy Attorney General
16 Attorneys for Respondent
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13 **DERRAN SMILEY,**

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15 **v.**

16 **MIKE EVANS, Warden,**

Respondent.

C 08-0045 RMW (PR)

19 **DECLARATION OF COUNSEL IN SUPPORT OF RESPONDENT'S EX PARTE**
20 **APPLICATION FOR FIRST EXTENSION OF TIME**
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13 **DERRAN SMILEY,**

Petitioner,

15 **v.**

16 **MIKE EVANS, Warden,**

Respondent.

C 08-0045 RMW (PR)

**DECLARATION OF
COUNSEL IN SUPPORT OF
RESPONDENT'S EX PARTE
APPLICATION FOR FIRST
EXTENSION OF TIME**

19 I, Joan Killeen, declare under penalty of perjury that:

20 I am a Deputy Attorney General of the State of California and am admitted to practice law
21 in this state and before this Court. I have been assigned to represent respondent and to prepare the
22 answer in this case. Respondent has made no previous request for an extension of time.

23 On April 28, 2008, this Court issued an Order to Show Cause, directing respondent to file
24 an answer to the petition for writ of habeas corpus within sixty days.

25 I request an additional sixty days from the present due date to prepare and file the answer.
26 This request is not made for the purpose of delay. In the past sixty days, I filed the answers to the
27 petitions for writ of habeas corpus in *Cruz v. Subio*, C 07-4329 JSW, and *Hawkins v. Dexter*, C 08-

1 1087 SI (PR), a motion to dismiss the petition for writ of habeas corpus in *Monroe v. Adams*, CIV
2 S-08-0558 MCE DAD P, a reply to the opposition to a motion to dismiss the petition for writ of
3 habeas corpus in *McCord v. Warden*, C 07-5217 CRB, and the respondent's briefs in *People v. Luna*,
4 H031666, and *People v. Ary*, 113020. I am currently working on the respondent's brief in *People*
5 *v. Terwilligar*, A119000, a case with a reporter's transcript over 1,800 pages long and a clerk's
6 transcript over 1,450 pages long. In addition, I have to file the respondent's brief in *People v.*
7 *Gonzalez*, H032193, and the answers to the petitions for writ of habeas corpus in *Tamboura v. Ayers*,
8 C 08-1143 JF, and *Nordlof v. Clark*, C 07-4899 MMC, before beginning work on the answer in this
9 case.

10 Petitioner raises six claims for relief in connection with his 2006 convictions for
11 kidnapping to commit rape and five counts of rape. The reporter's transcript of the trial is over
12 1,580 pages long and the clerk's transcript is over 420 pages long.

13 In light of my current work load, the number of claims raised by petitioner, and the
14 necessity of reviewing the lengthy trial record to address those claims, I will be unable to prepare
15 and file the answer by the current due date.

16 I have not contacted petitioner in this case because he is a state prisoner proceeding pro
17 se.

18 Executed on June 26, 2008, at San Francisco, California.

19
20 /s Joan Killeen
21 JOAN KILLEEN
22 Deputy Attorney General
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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 **DERRAN SMILEY,**

Petitioner,

13 v.

14 **MIKE EVANS, Warden,**

15 Respondent.
16

C 08-0045 RMW (PR)

**[PROPOSED] ORDER GRANTING
FIRST EXTENSION OF TIME TO
FILE ANSWER**

17 GOOD CAUSE APPEARING, respondent is granted an additional sixty (60) days to and
18 including August 26, 2008, to file an answer to the petition for writ of habeas corpus. Petitioner may
19 file a reply within (30) days after the answer has been filed and served.

20 DATED: _____
21

22 _____
23 RONALD M. WHYTE
24 UNITED STATES DISTRICT JUDGE
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DECLARATION OF SERVICE

Case Name: **Smiley v. Evans, Warden**

No.: **C 08-0045 RMW (pr)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **June 30, 2008**, I placed the attached **1) RESPONDENT'S EX PARTE APPLICATION FOR FIRST EXTENSION OF TIME; 2) DECLARATION OF COUNSEL IN SUPPORT OF RESPONDENT'S EX PARTE APPLICATION FOR FIRST EXTENSION OF TIME; and 3) [PROPOSED] ORDER GRANTING FIRST EXTENSION OF TIME TO FILE ANSWER** in the internal mail collection system at the Office of the Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

Derran Smiley
F-28162
Salinas Valley State Prison
P. O. Box 1050
Soledad, CA 93960

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 30, 2008**, at San Francisco, California.

L. SORENSEN

/s/ L. Sorensen

Typed Name

Signature